

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AGAPITO D. VASQUEZ,
Plaintiff,

v.

LAURA ELDRIDGE,
Defendant.

Case No. [19-cv-03374-JSW](#)

ORDER TO SHOW CAUSE

Petitioner is a California prisoner proceeding pro se. He has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. He has paid the filing fee. He claims that the prosecutor committed misconduct by bringing charges that were identical to each other and are not in the California Penal Code, his appellate attorney did not bring an adequate appeal, and neither the prosecutor nor defense counsel provided adequate jury instructions.

This court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). It shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” *Id.* § 2243.

It does not appear from the petition that Petitioner is not entitled to the writ he seeks. Accordingly, Respondent is ordered to show cause why it should not be granted, as follows:

1. The Clerk shall serve a copy of this order and the petition (ECF No. 1) on Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

2. Respondent shall file with the Court and serve on Petitioner, within **ninety-one (91)**

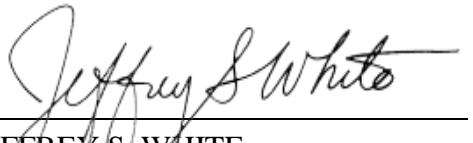
1 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules
2 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.
3 Respondent shall file with the answer and serve on Petitioner a copy of all portions of the state
4 trial record that have been transcribed previously and that are relevant to a determination of the
5 issues presented by the petition. If Petitioner wishes to respond to the answer, he shall do so by
6 filing a traverse with the Court and serving it on Respondent within **twenty-eight (28)** days of the
7 date the answer is filed.

8 3. Respondent may, within **ninety-one (91) days**, file a motion to dismiss on procedural
9 grounds in lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules
10 Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the
11 Court and serve on Respondent an opposition or statement of non-opposition within **twenty-eight**
12 **(28)** days of the date the motion is filed, and Respondent shall file with the Court and serve on
13 Petitioner a reply within **fourteen (14)** days of the date any opposition is filed.

14 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep the Court
15 informed of any change of address by filing a separate paper captioned "Notice of Change of
16 Address." He must comply with the Court's orders in a timely fashion. Failure to do so may
17 result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil
18 Procedure 41(b).

19 **IT IS SO ORDERED.**

20 Dated: August 20, 2019

21
22 
23 _____
24 JEFFREY S. WHITE
25 United States District Judge
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AGAPITO D. VASQUEZ,
Plaintiff,

v.

LAURA ELDRIDGE,
Defendant.

Case No. [4:19-cv-03374-JSW](#)

CERTIFICATE OF SERVICE

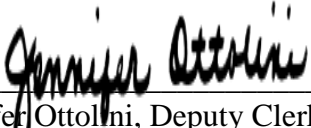
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 20, 2019, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Agapito D. Vasquez
AD-0805
California Health Care Facility
P.O. Box 32050
Stockton, CA 95213

Dated: August 20, 2019

Susan Y. Soong
Clerk, United States District Court

By: 
Jennifer Ottoloni, Deputy Clerk to the
Honorable JEFFREY S. WHITE